

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 5722 of 2005(F)

PETITIONER:

THE NILAMBUR CO-OPERATIVE URBAN BANK
LTD.NO.F.1043, P.O.NILAMBUR, REPRESENTED BY
ITS GENERAL MANAGER.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:

1. P.RAMASWAMY, MERCHANT, ROOM NO.NP-XI/927
THE NILAMBUR CO-OPERATIVE URBAN BANK
BUILDING, P.O.NILAMBUR.
2. CHEEMANDAN UMMER, MERCHANT,
ROOM NO.NP-XI/926, DO.
3. CHEMMINIKKARA HARIDASAN, MERCHANT,
ROOM NO.NP-XI/928, DO.
4. MANNITHODIKA ABDURAHIMAN, MERCHANT
ROOM NO.NP-XI/921, DO. DO.
5. MATHERI BALAKRISHNAN, MERCHANT
ROOM NO.NP.XI/919, DO. DO.
6. T.M.MOHAMMED ALI, MERCHANT,
ROOM NO.NP-XI/918, DO. DO.
7. C.K.JOSEPH, MERCHANT ROOM NO.NO-XI/920
OF DO. DO.
8. K.PATHUMMAKUTTY, SHANI MANZIL,
PADIKUNNU P.O.NILAMBUR.

BY ADV. SRI.C.P.MOHAMMED NIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PIUS C. KURIAKOSE,J.

W.P.(C) No.5722 of 2005

Dated: 10th July, 2007

JUDGMENT

The Nilambur Co-operative Urban Bank Ltd. governed by the provisions of the Banking Regulations Act and doing banking business as per the licence issued by the Reserve Bank of India is aggrieved in that Exts.P3 and P3(a) to P3(f) of suits filed by them against their tenants in occupation of their buildings have not been entertained by the civil court on the reason that the suits are not maintainable in law in view of Section 69 and 100 of the Kerala Co-operative Societies Act. The petitioner submits that 7 original suits were filed by them before the Munsiff's Court, Manjeri seeking decrees for eviction of the tenants in occupation of the buildings belonging to them. Exts.P3 and P3(a) to P3(f) are copies of the complaints which seek the following directions:

- a) to pass a decree for eviction of the tenants.
- b) for a decree for arrears of rent and
- c) for a direction to pay damages for use and occupation of the building.

The petitioner became obliged to file the suits in view of a direction

from the Reserve Bank of India that the Bank is precluded from holding non-banking assets except to the extent required for Bank's own use. Ext.P1 is the copy of the letter issued by the Reserve Bank of India. Ext.P2 produced along with the Writ Petition is the copy of the Government Notification exempting buildings owned by the Co-operative Societies in the State from the operation of the provisions of Section 11 of the Rent Control Act. It is submitted that the suits were initially returned to the Bank by endorsement dated 17.12.2004 that they are not maintainable in view of Sections 69 and 100 of the Kerala Co-operative Societies Act. The complaints were resubmitted stating that the bye-laws of the Bank do not provide letting out of buildings to the tenants as one of its objects and hence in the light of the Full Bench judgment of this court in **Meeran Unni v. Kottayam Dt. Co-op. Bank** (1985 KLT 384) the suits are maintainable. The learned Munsiff has however reiterated his earlier view and returned the complaints again vide endorsements Exts.P5 and P5(a) to P5(f) on the reverse of the complaints. The aggrieved petitioner has filed this Writ Petition under Article 227 of the Constitution seeking to set aside Exts.P5 and P5(a) to P5(f) and to direct the learned Munsiff to accept Exts.P3 and P3(a) to P3(f) complaints on file.

2. A counter affidavit has been filed by the first respondent, one of the tenants and the defendant in Ext.P3 suit. He refutes the grounds raised in the Writ Petition and contends that the judgment of the Full Bench of this court in **Meeran Unni v. Kottayam Dt. Co-op. Bank** (supra) has no application to the facts of the present case and that the complaints were returned by the learned Munsiff on valid reasons. According to him, the contention that as per the bye-laws construction of buildings and letting out of the same to the tenants do not form part of the business of the Bank is not correct as it is clear from the terms of the bye-laws and admittedly the premises occupied by the party respondents have not been let out for any charitable purposes. Referring to Section 69(1)(f) of the Kerala Co-operative Societies Act he contends that the subject matter of the suit squarely comes within the jurisdiction of the Registrar of Co-operative Societies and that the Civil Court has nothing to do with the matter. He also contends that on account of existence of alternative remedy of appeal, the present Writ Petition under Article 227 is not maintainable.

3. I have heard the submissions of Mr.V.G.Arun, counsel for the petitioner and those of Mr.C.P.Mohammed Nias, counsel for the party

respondents.

4. Addressing me elaborately on the various grounds raised in the Writ Petition Mr.V.G.Arun would submits that the principles laid down by the Full Bench of this Court in **Meeran Unni v. Kottayam Dt. Co-op. Bank** (supra) have been ignored by the learned Munsiff. Drawing my attention to Ext.P4 bye-laws of the Bank, learned counsel submitted that under clause 5 which lays down the objects of the Bank, letting out of the buildings is not an object. Construction of the buildings and letting out the same to the tenants does not constitute business of the Bank. Drawing my attention to Section 2(1) of the Act, learned counsel argued that only those matters touching the business, constitution, establishment or management of a Society capable of being the subject of litigation and including a claim in respect of any sum payable to or by a Society, whether such claim be admitted or not can be a dispute. Relying on the judgment of this court in **Tripoonithura Handloom Weavers Co-op. Society Ltd.v. Ratnakumar** (2001(2) KLT Sh.Notes Case No.46, page 41), the learned counsel argued that the essential question will be whether the Bank had business transaction with the party respondents, only in which case the bar under Section

100 will be attracted. Learned counsel cited various judicial precedents at the bar such as **Sekharan v. State of Kerala** (1976 KLT 137), **K.C.Varkey v. The Director of Industries and Commerce** (ILR 1978(2) Ker. 143). Strong reliance was placed by the learned counsel on the judgment of the Supreme Court in **D.M.Co-op. Bank v. Dalichand** (AIR 1969 S.C. 1320) also to argue that the word 'business' has been used in Section 91(1) of the Maharashtra Co-operative Societies Act which is almost in pari materia with Section 100 of the Kerala Co-operative Societies Act in a narrower sense.

5. Mr.Mohammed Nias, counsel for the party respondents would resist all the submissions of Mr.V.G.Arun on the basis of the contentions raised in the counter affidavit.

6. I have considered the rival submission in the light of the various judicial precedents cited at the Bar. It is seen that the Full Bench of this court in **Meeran Unni's** case (supra) relied on the judgment of the Supreme Court in **D.M.Co-op. Bank v. Dalichand** (supra) and noticed that the Supreme Court had followed the judgment in **D.M.Co-op. Bank v. Dalichand** (supra) in a subsequent decision in **Hingorani v. Pravinchandra Kantilal Shah**

and others (AIR 1972 S.C. 2161). Sub-clauses xvi and xvii of Ext.P4 seem to have impressed by the learned Munsiff. Sub-clause xvi is as follows:

"To acquire, to construct, to maintain and alter any building or works necessary or convenient for the purposes of the bank."

Sub-clause xvii is as follows:

"To manage, to sell and to realise any property which may come into the possession of the bank in satisfaction or part satisfaction of any of its claims."

Sub-clause xvii concededly does not apply to this case. The question is whether sub-clause xvi will taken in letting out of the buildings within the ambit of clause 5. Construction of buildings and letting out the same to the tenants is not an object specifically enumerated under clause 5 of Ext.P4. The petitioner-Bank is primarily engaged in the business of banking and with a view to encourage thrift self help and co-operation among its members. Clause xvi which seems to permit construction, maintenance and alteration of buildings, in my opinion permits such construction, maintenance and alteration only when the same is necessary or convenient for the principal purposes

of the Bank. The above view in my opinion has considerable support in the judgment of the Full Bench of this court and in the two Supreme Court judgments referred to above.

7. Accordingly, the Writ Petition will stand allowed. Exts.P5 and P5(a) to P5(f) endorsements are set aside the learned Munsiff is directed to receive Exts.P3 and P3(a) to P3(f) complaints on file, issue summons to the respondents and dispose of the suits in accordance with law.

srd

PIUS C.KURIAKOSE, JUDGE